

[4310-55]

## DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE  
AND PLANTSProposed Endangered Status for the Bolson  
TortoiseAGENCY: Fish and Wildlife Service,  
Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Bolson tortoise (*Gopherus flavomarginatus*) to be an endangered species. This action is being taken because the tortoise is under heavy pressure from human predation, habitat modification, competition from grazing stock, and collection of individuals. The proposed action, if completed, would provide additional protection to this species, listed now as an appendix II species on the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The Bolson tortoise is known from the States of Chihuahua, Coahuila, and Durango in Mexico.

DATES: Comments from the public and the Government of Mexico must be received by December 25, 1978.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C.

FOR FURTHER INFORMATION  
CONTACT:

Mr. Keith M. Schreiner, Associate Director, Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

On June 15, 1978, the Fish and Wildlife Service was petitioned by Dr. David Morafka of California State University-Dominguez Hills to list the Bolson tortoise, *Gopherus flavomarginatus*, as an endangered species under provisions of the Endangered Species Act of 1973. Included with the petition was a report entitled "The Ecology and Conservation of the Bolson Tortoise, *Gopherus flavomarginatus*" in which Dr. Morafka reviewed the biology and status of the species throughout its range. On June 29, 1978, the Director of the Service

notified Dr. Morafka that he had supplied sufficient information to warrant serious consideration for listing under provisions of the Act.

The Bolson tortoise is the largest terrestrial ectothermic vertebrate in North America and one of four species of the genus *Gopherus*, a genus confined to North America. This species was only described in 1959 and remains one of the least known reptiles in the northern hemisphere in spite of its size. Adults may measure in excess of 1 meter shell length, with a flat-topped, posteriorly flared carapace with laminae that are pale in contrast to dark centers. The plastron is horn yellow. In addition, there are various bone features (osteological characters) which distinguish this species from its close relatives. The Bolson tortoise is associated with grasslands and may have at one time been much more wide-ranging than at present. It is now confined to southeast Chihuahua, southwest Coahuila, and northeast Durango in northern Mexico. At present there are still a few remaining viable populations, although nearly all populations have been impacted directly by man.

Section 4(a) of the Act (16 U.S.C. 1531 et seq.) states:

General.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, or educational purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director.

SUMMARY OF FACTORS AFFECTING THE  
SPECIES

These findings are summarized herein under each of the five criteria of section 4(a) of the Act. These factors, and their application to the Bolson tortoise are as follows:

1. *The present or threatened destruction, modification, of curtailment of its habitat or range.*—Habitat destruction is accelerating throughout the range of the Bolson tortoise. Plowing and irrigation of fields for cotton, beans, corn, and melons have apparently contributed to the extirpation of the species in certain areas, such as the region west of Mexican Highway 49 and around Tlahualilo in Durango. As Mexico's resettlement program continues, more and more of the tortoise's habitat will likely be converted to agricultural and grazing uses. The continued existence of the tortoise in the vi-

cinity of such practices is highly unlikely.

Habitat destruction also occurs through overgrazing by cattle and goats. Goat herds have long grazed the foothills of the tortoise country. Water supplies have been increased by underground drilling and as a result cattle are rapidly increasing in density in these arid grasslands. Some areas are now beginning to show the marked effects of overgrazing, usually indicated in this type of habitat by the erosion of topsoil and invasion of mesquite and creosote scrub. Cattle and goats destroy browse needed by the tortoises as well as burrows and cover sites by trampling.

2. *Overutilization for commercial, sporting, or educational purposes.*—In the past, Bolson tortoises have been in demand for private collections, zoos, and museums in the United States and elsewhere; occasional shipments have reached dealers in El Paso. The extent of this collection is presently unknown in light of the tortoise's status as an appendix II species on the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, Mexico is not a party to the convention and it is likely that some trade is continuing. As recently as January 1978, Americans have been reported in Ceballos, Durango buying specimens.

3. *Disease or predation.*—Natural predation is probably only a minor factor contributing to the status of the Bolson tortoise. However, human predation may be the main cause for the extirpation or reduction in numbers of this tortoise over large areas of its range. This species is used extensively for food by the local population and although much of the area inhabited by tortoises is only sparsely settled, the tortoise populations are often eliminated as far away as 10 kilometers from the nearest habitation. As settlement increases, predation on the tortoises will accelerate.

4. *The inadequacy of existing regulatory mechanisms.*—Although permits are required by Mexico for the scientific collection of this species, no active resident personnel are present to enforce whatever legal protection may exist. There is no legal protection for the tortoise from local consumption. According to Dr. Morafka's report, the enforcement of existing trade restrictions is also lacking.

5. *Other natural or manmade factors affecting its continued existence.*—Not applicable.

## EFFECTS OF THE RULEMAKING

Endangered species regulations already published in title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endan-

gered species. The regulations referred to above, which pertain to endangered species, are found at § 17.21 of title 50, and are summarized below.

With respect to the Bolson tortoise, all prohibitions of section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in 50 CFR Part 17 (1977) provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits involving endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of

time to relieve undue economic hardship which would be suffered if such relief were not available.

#### PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the Bolson tortoise;

(2) Additional information concerning the range and distribution of this species.

Final promulgation of the regulations on the Bolson tortoise will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C., and may be examined during regular business hours or obtained by mail. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environment Policy Act of 1969.

The primary author of this proposed rulemaking is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, 202-343-7814.

#### REGULATIONS PROMULGATION

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.11(i) by adding, in alphabetical order under "Reptiles," the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

SPECIES			RANGE				
Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened	Status	When listed	Special rules

#### REFILES

Tortoise, bolson	<u>Gopherus</u> <u>flavomarginatus</u>	NA	Mexico	Entire	E	N/A
------------------	---	----	--------	--------	---	-----

NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: September 18, 1978.

ROBERT S. COOK,  
Acting Director,  
Fish and Wildlife Service.

[FR Doc. 78-26994 Filed 9-25-78; 8:45 am]